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IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF PENNSYLVANIA

JAN 31 2006

CLERK U.S. DISTRICT COURT  
WESTERN DIST. OF PENNSYLVANIA  
CIVIL ACTION

BRIAN COHEN

V.

NO. 04-283E

PENNSYLVANIA BOARD OF PROBATION AND PAROLE,  
ET AL.

**MOTION FOR LEAVE TO AMEND HABEAS PETITION**

AND NOW COMES, the petitioner, BRIAN COHEN, in pro per, who respectfully moves this court for leave to amend the petition for writ of habeas corpus prior to adopting the magistrate judge's report and recommendation and on support thereof represents:

1. Petitioner has just discovered that he has inadvertently omitted a crucial claim of an ex post facto violation of the US Constitution with regard to the defendant's retroactive application of 42 PA. C.S.A. Section 9718.1 which defendants are utilizing as a vehicle to deny petitioner parole. Petitioner avers that the Third Circuit has held that the parole board may not retroactively apply 42 PA. C.S.A. Section 9718.1 to deny parole as such action is a glaring ex post facto violation. SEE, MICKENS-THOMAS V. VAUGHN, 355 F3d 294, (C.A. 3(PA.) 2004).

2. Petitioner avers that he should be freely granted leave to amend prior to dismissal and where the district court refuses leave to amend it must state reasons. SEE, McCLELLON V. LONE STAR GAS CO., 66 F3d 98 (5th CIR. 1995) and MOORE V. REYNOLDS, 155 F3d 1086 (10th CIR. 1998).

3. Petitioner avers that respondents will not be prejudiced by an order granting leave to amend petition.

4. Petitioner requests that should leave to amend be denied and the court dismisses the petition that it does so without prejudice thereby allowing petitioner to refile on the ex post facto claim.

WHEREFORE, Petitioner prays this court to grant the leave requested herein.

RESPECTFULLY SUBMITTED,

*Brian Cohen*

BRIAN COHEN, PETITIONER

JANUARY 27, 2006

**CERTIFICATE OF SERVICE**

I Brian Cohen do hereby certify that I have served a true and correct copy of the foregoing by placing same in the US Mail, 1st class postage paid and addressed as follows:

ROBERT P. ENGLESBERG, ESQ.  
564 FORBES AVE. 6th FL.  
PITTSBURGH, PA. 15219

RESPECTFULLY SUBMITTED,

*Brian Cohen*

BRIAN COHEN  
JANUARY 27, 2006